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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of

Establishment of a Class A
Television Service

)
) MM Docket No. 00-10
) MM Docket No. 99-292
) RM-9260

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WASHINGTON, D.C. 20541

**COMMENTS OF
UNIVISION COMMUNICATIONS INC.**

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SUMMARY

Univision Communications Inc. (“Univision”), by its attorneys, hereby respectfully submits its comments on the Commission’s Order and Notice of Proposed Rule Making (released January 13, 2000) (“NPRM”) regarding the implementation of the Community Broadcasters Protection Act of 1999 (“CBPA”). As a licensee of both full-power and low-power television stations, Univision understands well the delicate balance that Congress struck in the CBPA, which is intended to provide full-power NTSC and DTV stations with adequate interference protection and flexibility to preserve our existing system of free, over-the-air broadcasting, while ensuring the continued existence of those few LPTV stations that have provided exemplary service to their local communities over the years.

In order to achieve the goals of Congress and comply with the CBPA, Univision herein urges the Commission to: (1) limit Class A eligibility to those stations that met the Congressional criteria during the 90-day period specified in the CBPA; (2) clarify that the Commission will treat a grant of Class A status as a permanent modification of the LPTV license; (3) regulate Class A service under Part 73 of the Commission’s rules, with some modifications; and (4) allow Class A licensees to apply for DTV facilities on their existing analog channels. Such an approach will protect those LPTV stations that have truly provided exemplary service to their communities, while providing maximum flexibility to the Commission and full-power stations for successfully accomplishing the transition to digital television.

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INTRODUCTION

Univision is the leading Spanish-language television broadcaster in the United States. It operates the Univision Network, the most popular Spanish-language broadcast network in the country, which has 47 television station affiliates, 22 of which are full-power television stations.

^{1/} The Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), *codified at* 47 U.S.C. § 336(f).

Univision also controls Univision Television Group, Inc. ("UTGI"), which indirectly owns and operates twelve full-power UHF and seven low-power UHF television stations. UTGI's stations serve fifteen of the largest Hispanic markets, including nine of the top ten.^{2/}

Having met the standards established by Congress in the CBPA for Class A status, each UTGI low-power television ("LPTV") station timely filed the requisite Statement of Eligibility for Certification of Class A status. As Univision anticipates the grant of Class A status for each of its LPTV stations, the NPRM proposing regulations for Class A licensees is of significant importance to Univision.

As a licensee of both full-power and low-power television stations, Univision understands well the delicate balance that Congress struck in the CBPA, which is intended to provide full-power NTSC and DTV stations with adequate interference protection and flexibility to preserve our existing system of free, over-the-air broadcasting, while ensuring the continued existence of those few LPTV stations that have provided exemplary service to their local communities over the years.^{3/} It is for this reason that Congress established a relatively high

^{2/} Univision's full-power stations include KDTV(TV), San Francisco, California; KFTV(TV), Hanford (Fresno), California; KMEX-TV, Los Angeles, California; KTVW-TV, Phoenix, Arizona; KUVI-TV, Bakersfield, California; KUVN(TV), Garland (Dallas), Texas; KUVS(TV), Modesto (Sacramento), California; KWEX-TV, San Antonio, Texas; KXLN-TV, Rosenberg (Houston), Texas; WGB0(TV), Joliet (Chicago), Illinois; WLTv(TV), Miami, Florida; and WXTV(TV), Paterson (New York), New Jersey. Univision's LPTV stations include K30CE, Austin, Texas; KABE-LP, Bakersfield, California; KDTV-LP, Santa Rosa, California; KUVe-LP, Tucson, Arizona; KUVN-LP, Fort Worth, Texas; W47AD, Hartford, Connecticut; and WXTV-LP, Philadelphia, PA.

^{3/} H.R. Rep. No. 464 106th Cong. 1st Sess. (1999).

standard for Class A status, a standard that even many full-power stations would have trouble meeting.

UTGI's LPTV stations have already suffered a significant number of channel displacements and power reductions in order to make way for DTV. In this regard, the protections of Class A status are somewhat belated, as these displacements have already harmed UTGI's local over-the-air LPTV service to the Hispanic population in many communities. The grant of Class A status will hopefully stop this erosion of LPTV service. Having said this, however, in order to minimize harm to the service provided by full-power stations, Class A status should be applied narrowly, as Congress intended, with stringent qualification criteria. Adoption of more liberal criteria could potentially make the Class A service and the LPTV service synonymous. The harm to full-power stations of such a broad application of Class A status cannot be justified under the Commission's public interest mandate.

Univision believes that the Commission can achieve the goals of Congress and comply with the CBPA by adopting Class A regulations that: (1) limit Class A eligibility to those stations that met the Congressional criteria during the 90-day period specified in the CBPA; (2) clarify that the Commission will treat a grant of Class A status as a permanent modification of the LPTV license; (3) regulate Class A service under Part 73 of the Commission's rules, with some modifications; and (4) allow Class A licensees to apply for DTV facilities on their existing analog channels.

I. The Commission Must Adopt Rules Consistent with the Provisions of the CBPA

A. The NPRM Is Unclear As to the Permanence of Class A Status

In its effort to determine which LPTV stations are deserving of protection from displacement, Congress created through the CBPA a ninety-day “audit period” (the ninety days prior to enactment of the CBPA) as a way of determining which LPTV stations have been providing superior service. Congress presumably chose the ninety days *prior* to enactment of the CBPA in order to be able to accurately assess the public interest performance of LPTV stations before licensees could modify their behavior in response to passage of the CBPA.

The CBPA requires the Commission to grant Class A status to an LPTV station where:

(A)(i) during the 90 days preceding the date of enactment of the Community Broadcasters Protection Act of 1999

(I) such station broadcast a minimum of 18 hours per day;

(II) such station broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; and

(III) such station was in compliance with the Commission’s requirements applicable to low-power television stations; and

(ii) from and after the date of its application for a class A license, the station is in compliance with the Commission’s operating rules for full-power television stations; or

(B) the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.^{4/}

^{4/} 47 U.S.C. § 336(f)(2).

Univision's reading of this language is that if an LPTV station met the three requirements of (A)(i) in the ninety-day period prior to enactment of the CBPA, it will, upon certification and application, be permanently made a Class A station. Pursuant to (A)(ii), as a Class A station, it will need, from the day of filing its Class A application, to comply with the applicable full-power rules. Failure to comply with the full-power rules would subject the station to the same fines and other sanctions applicable to full-power stations. In this regard, Univision urges the Commission to make clear that while a Class A station may lose its broadcast license for sufficiently severe violations of the Commission's rules, Class A status itself is not revocable. A regulatory scheme whereby the level of interference protection a station receives can change on a daily basis would be completely unworkable. Moreover, it would be counterproductive to create a system whereby full-power stations search out rule violations by Class A stations in order to be able to displace them with a power increase application. A Class A television station should enjoy the same stability of interference protection as, for example, a Class C FM station. The Commission does not downgrade a Class C FM station to a Class A FM station for rule violations, although it might revoke the license itself if the violations are sufficiently serious. Class A television stations should be treated no differently.

Thus, Univision urges the Commission to grant Class A status to those stations meeting the criteria established by Congress, and to recognize the permanence of that status. To do otherwise would create a highly unpredictable regulatory environment where the focus in processing modification applications would be shifted from the technical issues raised by an application to the rule compliance history of any Class A stations affected by the modification.

B. The Commission Should Exercise Its Discretion to Grant Class A Status “Where the Public Interest, Convenience, and Necessity Would Be Served” Only in Very Limited Circumstances

While Univision recognizes that the CBPA also allows the Commission to grant Class A status where “the public interest, convenience, and necessity would be served,”^{5/} the Commission should apply this discretion only in very limited circumstances. As demonstrated by the fact that the Commission received over 1600 certifications of eligibility for Class A status, allowing LPTV stations that do not meet the Congressional criteria to nonetheless obtain Class A status will make it extremely difficult for full-power stations to make the facilities modifications necessary to serve their communities in the future. If the Commission liberally grants Class A status, it will effectively be rewriting the interference protection rules for the existing LPTV service rather than creating the new Class A service envisioned by the CBPA.

The Commission’s discretion under the CBPA should not be used as a mechanism for opening the floodgates for conversion to Class A service. Instead, it should be used as Congress intended, to provide displacement protection to a very limited group of LPTV stations that Congress designated as providing particularly meritorious service. Thus, for example, if a station would have met the Congressional criteria but was off the air for a week because of severe technical problems, the Commission may wish to use its discretion to grant the station Class A status. The Commission should not, however, begin crafting a new set of alternative criteria for Class A eligibility. Such an approach would eliminate much of the benefit earned by truly

^{5/} 47 U.S.C. § 336(f)(2)(B).

exemplary LPTV stations while greatly harming the ability of full-power stations to serve their audience.

C. In Determining That Programming Is “Local” For Purposes of Qualifying for Class A Status Under the CBPA, the Commission’s Test Should Be Whether the Programming Was Produced in the Station’s DMA

In making the determination as to whether programming aired during the ninety-day qualification period qualifies as “local programming,” the NPRM proposes that the test be whether the programming was produced within a station’s protected service area.^{6/} However, the CBPA states that programming shall be deemed local if it is produced in the station’s “market area.”^{7/} Univision therefore believes that the appropriate measure is whether programming is produced within the Nielsen Designated Market Area (“DMA”) in which the LPTV station is located. Had Congress intended to limit the definition to only programming produced within an LPTV station’s “signal contour” or “coverage area,” it certainly would have said so, rather than use the broader term “market area.”

Moreover, there are a number of reasons for using a DMA-based definition. LPTV stations already have relatively small service areas because of the limitations placed on their operation by the Commission. In addition, because of their secondary status, many LPTV stations have had to reduce their coverage even further to avoid causing interference to full-power stations. As a result, counting only programming physically produced within the signal contour of an LPTV station would often mean that only programming produced very close to the

^{6/} NPRM at ¶ 19.

^{7/} 47 U.S.C. 336(f)(2)(A)(i)(II).

transmitter site could be deemed local. Thus, LPTV stations that covered many important local events for their audience might not qualify for Class A status merely because the local events did not occur close to the transmitter. In this regard, the NPRM itself recognizes that it may not be technically feasible for a Class A station to place a signal over its entire community of license.^{8/} Thus, an LPTV station could have provided extensive coverage of events in its community of license only to discover that the Commission does not consider the programming local because the events covered occurred outside the station's protected contour.

Another pragmatic reason for utilizing a DMA approach is to avoid prolonged fights and hair-splitting over whether a program was produced on the north side of the street or the south side of the street where the street itself marks the edge of a station's protected contour. Whether programming has been produced within a station's DMA is a much simpler analysis, and will reward LPTV stations that have truly carried quality local programming from throughout their DMA that is of interest to their audience, as opposed to merely airing static video from a camera mounted atop the station's tower.

D. The CBPA Does Not Provide for Future Opportunities to Apply for Class A Status

The CBPA establishes a specific time period in which LPTV stations can apply for Class A status.^{9/} The Commission seeks comment as to whether the CBPA allows it to accept future

^{8/} NPRM at ¶ 20.

^{9/} The CBPA required qualifying low power television stations to file a Statement of Eligibility for Certification of Class A Status with the Commission by January 28, 2000. Certified applicants then are required to file an initial application for conversion to Class A status within 30 days from the date the Commission prescribes Class A regulations. See 47 U.S.C. § 336(f)(1)(B)&(C).

applications for Class A status after the termination of this initial application period.^{10/} Univision believes that it does not. Allowing LPTV licensees future opportunities to apply for Class A status merely frustrates the underlying purpose of the CBPA.

As discussed above, the intent of Congress in creating Class A status was to protect those existing LPTV stations that have provided the public with exemplary service from being displaced during the transition to DTV. Congress then presented the Commission with the criteria that it believed indicated exemplary service by an LPTV station. If stations that did not meet the Congressional criteria during the ninety-day audit period are now allowed after the fact to conform their behavior to the Congressional criteria and later apply for Class A status, the efforts of Congress to sort out those LPTV stations truly deserving of Class A protection will have been defeated, and Class A status will become synonymous with an LPTV license. The harm of such an approach is that if most LPTV stations are granted Class A status, it will be extremely difficult for full-power stations -- stations that provide the bulk of local programming -- to modify their facilities to better serve their audiences. In fact, acceptance of future Class A applications could preclude the initial group of Class A stations from making necessary modifications to better serve their audiences or to resolve interference issues with other stations.

In enacting the CBPA, Congress implicitly called upon the Commission to balance the competing interests of protecting truly worthy local LPTV stations from displacement while promoting free, over-the-air broadcasting by full-power NTSC and DTV stations. Efforts by the Commission to continue granting Class A status after the initial eligibility period will upset that

^{10/} NPRM at ¶ 9.

balance. The CBPA fails to provide any additional opportunities outside of the initial application period for LPTV stations to seek Class A status, and the Commission should not attempt to create such opportunities now. The Commission should therefore interpret the CBPA as providing the sole window of opportunity for LPTV stations to apply for Class A status, and decline to accept future Class A applications.

II. Class A Stations Generally Should Be Regulated Under Part 73 of the Commission's Rules

The Commission seeks comment on its proposal to regulate Class A stations in accordance with Part 73 of the Commission's Rules.^{11/} Univision agrees with this proposal. Given the CBPA's requirement that Class A stations comply with most of the rules applicable to full-power stations, making Class A licensees subject to Part 73, including compliance with the commercial limitations, children's programming, political programming and public inspection file rules, is the most pragmatic way of codifying the requirements for Class A status established by the CBPA. Having said that, the Commission is correct that there are a number of Part 73 rules that cannot reasonably be applied to LPTV stations. In particular, Univision urges the Commission to exempt Class A licensees from compliance with the community coverage rule,^{12/} the main studio rule,^{13/} and the multiple ownership rule.^{14/}

^{11/} NPRM at ¶ 20.

^{12/} See 47 C.F.R. § 73.685.

^{13/} See 47 C.F.R. § 73.1125.

^{14/} See 47 C.F.R. § 73.3555.

As an initial matter, many LPTV stations currently do not, and in many cases cannot, provide signal coverage of their entire community of license. This is particularly true where an LPTV station has previously been forced to modify its facilities to avoid causing interference to a full-power station. The CBPA does not specifically disqualify such LPTV stations from Class A status, and it would be arbitrary and unfair for the Commission to functionally eliminate Class A status through application of the community coverage rule.

Similarly, compliance with the main studio rule would often be cumbersome and expensive for LPTV stations, which tend to have few employees and limited resources. In addition, many LPTV stations are authorized to operate unattended. Procuring a formal main studio for operation of these facilities would necessitate the hiring of additional employees and incurring additional expenses, thereby diverting resources from local and other programming. As a result, applying the main studio rule to Class A stations might force them to cut back on the very programming that Congress sought to promote through the creation of Class A status.

Finally, Univision agrees with the Commission's proposal that multiple ownership restrictions not be applied to Class A stations.^{15/} As Class A status is an attempt to preserve existing LPTV facilities by rewarding LPTV licensees that have provided exemplary service to the public, forcing their divestiture or limiting their marketability through ownership limits would harm their viability, and therefore conflict with the purposes of the CBPA.

^{15/} NPRM at ¶ 22.

III. Class A Stations Should Use Their Existing Analog Channels for Operation of Digital Facilities

The CBPA requires that the Commission accept a Class A station's application for DTV facilities where it would not create new interference to existing DTV allotments.^{16/} In the NPRM, the Commission seeks guidance on how to authorize digital facilities for Class A stations.^{17/}

Univision agrees that a Class A station should be eligible to apply for a DTV authorization. However, given the limited availability of spectrum, along with the number of full-power stations transitioning to DTV, allotment of new DTV channels for Class A facilities would further complicate an already difficult situation. Allotment of new Class A DTV channels at this time could preclude many full-power NTSC stations from obtaining the technical modifications and/or channel changes necessary to best serve their audience. With the DTV transition process barely underway, it is difficult, if not impossible, to predict what modifications to full-power stations may have to be made. Moreover, in many urban markets there may be no available channels to assign to Class A stations for DTV operation. Univision therefore proposes, as with new NTSC allotments,^{18/} that the Commission allow a Class A licensee the opportunity to apply for a DTV facility on its existing analog channel. Such a proposal is

^{16/} 47 U.S.C. § 336(f)(4).

^{17/} NPRM at ¶ 23.

^{18/} Second Memorandum Opinion and Order on Reconsideration of The Fifth and Sixth Report and Orders, MM Docket No. 87-268, ¶ 15 (1998).

consistent with the CBPA and provides maximum flexibility to the Commission and full-power stations for dealing with the unpredictable nature of the DTV transition.

CONCLUSION

For the reasons set forth above, Univision encourages the Commission to adopt Class A regulations that balance the need for Class A protection for LPTV stations that have provided exemplary service to the public, against the need to provide full-power stations with as much flexibility as possible to continue serving their audience and successfully accomplish the transition to DTV.

Respectfully submitted,

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